

## CHAPTER THREE – PERSONNEL POLICIES

### SUBCHAPTER 3.04 – COMPLAINTS, GRIEVANCES AND DISCIPLINARY MATTERS

#### Division 1: General

##### 3.04.010 Summary of Procedures for Submitting Complaints or Grievances

(a) *Introduction.* This section summarizes the procedures set forth in this Subchapter. These procedures are designed to encourage resolution of employee concerns in a fair and speedy manner at the lowest level possible, while protecting the rights of all persons involved. This is a summary only; in case of any inconsistencies between this section and other provisions of this Subchapter, such other provisions shall prevail.

(b) *Change in Pay, Hours or Other Conditions of Employment.* The terms and conditions of employment, such as salaries, are set by the City Council and can only be changed by the City Council.

- (1) An employee not represented by a collective bargaining agent who wishes the City Council to consider a pay raise, a change in the number of hours or any other change in the terms and conditions of employment, must follow the following process:
  - (A) The employee should meet with his or her supervisor regarding the request and the reasons for the proposed change. The supervisor is required to communicate the request to the City Manager.
  - (B) Upon receipt of the supervisor's report, the City Manager may prepare and forward recommendations to the City Council.
  - (C) The City Council has the sole and absolute discretion to grant or deny any pay raises or other similar change.
- (2) Employees represented by a Recognized Employee Organization, such as the Police Officers Association, are required to negotiate through their agent.

(c) *Misconduct, Harassment or Discrimination.* If an employee (reporting employee) believes that another employee or supervisor has committed an act of misconduct, harassment or discrimination against an employee, then the following procedures will apply:

- (1) The reporting employee should report the matter to a supervisor, the City Manager, or the Chief of Police. The reporting employee does not have to follow the normal Chain of Command.
- (2) The person receiving the report must take appropriate action, which may include reporting the matter to the City Manager or another person in a position to take action, and conducting an informal or formal investigation. The report will be kept confidential, to the extent possible. However, if disciplinary action is taken

against the alleged perpetrator, the reporting employee may be requested to testify against the alleged perpetrator in order for the Town to impose discipline on that person.

- (3) In the event a complaint is sustained, discipline may be imposed on the alleged perpetrator pursuant to the procedures set forth in this Subchapter.
- (4) The person receiving the complaint shall advise the reporting employee of the final disposition. However, privacy rights may preclude the Town from publicly announcing specific disciplinary actions.

(d) *Grievances.* If an employee believes that a specific written departmental or Town rule or regulation or specific provision of a Memorandum of Understanding has been violated, misinterpreted, or misapplied, the employee ("grievant") may file a "grievance." The procedures set forth in Division 3 of this Subchapter govern the handling of grievances. Some examples of matters that may be "grieved" are: a belief that job assignments were made on the basis of favoritism or discrimination; a belief that an employee has accrued more sick leave or vacation leave than is shown on the Town's records; and a complaint that the Town is not following its own rules or policies in administering a certain program.

### **3.04.020 Definitions**

As used in this Subchapter, the following terms are defined.

*Alternative Dispute Resolution (ADR) Panel* means a panel of five persons selected in accordance with this Subchapter to mediate or hear an appeal from an order imposing disciplinary action.

*Appellant* means an employee who has filed a Notice of Appeal from a Final Notice of Disciplinary Action.

*Appropriate Department Director* means the Director of the department in which the complainant works provided that the Department Director is not the subject of the complaint, in which case the Appropriate Department Director shall mean the Assistant City Manager or City Manager.

*Complaint* means a charge or allegation of harassment, discrimination or similar alleged offensive conduct which, if sustained, could lead to disciplinary action against the employee who committed the wrongful conduct.

*Complainant* means the person bringing a charge or allegation of harassment, discrimination or similar alleged offensive conduct which, if sustained, could lead to disciplinary action against the employee who committed the wrongful conduct.

*Grievance* means a written statement alleging a violation, misinterpretation or misapplication of a specific written departmental or Town rule or regulation or specific provision of a Memorandum of Understanding, other than a complaint as defined in this Subchapter.

*Grievant* means the employee or group of employees who files a grievance.

*Hearing Officer* means the person selected in accordance with this Subchapter to hear an appeal from an order imposing disciplinary action.

For readability the following terms are not capitalized in this Subchapter: Appellant, Complaint, Complainant, Grievance and Grievant.

### **3.04.030 No Retaliation**

(a) No reprisals or retaliation may be taken against any individual for reporting or complaining about an incident of harassment, discrimination or misconduct, real or perceived, or for cooperating or participating in any investigation of harassment, discrimination or misconduct.

(b) Nothing in the preceding paragraph shall prevent disciplinary action against an employee who has presented false information, false testimony, or a false complaint.

### **3.04.040 Employee's Duties**

It is the duty of each employee to cooperate fully in any investigation of, or disciplinary proceedings related to, harassment, discrimination or misconduct, and to answer truthfully and completely all questions asked during such an investigation or disciplinary proceeding.

### **3.04.050 Administrative Leave**

The City Manager may place an employee on paid or unpaid administrative leave in accordance with and on the grounds set forth in section 3.06.220 entitled "Administrative Leave."

## **Division 2: Harassment or Discrimination**

### **3.04.060 Disposition of Harassment or Discrimination Complaints**

(a) *Policy.* It is the policy of the Town of Colma to immediately conduct a thorough, objective and complete investigation of each complaint of harassment and discrimination; to attempt to determine whether unlawful conduct has occurred; and to take remedial action, if appropriate. In appropriate cases, the City Manager may order the investigation to be conducted by a person other than a Town employee.

(b) *Initial Complaint.* An employee or job applicant who believes he or she has been harassed or discriminated against may make a complaint orally or in writing to any of the following, without following the Chain of Command: the Human Resources Manager; the Department Director; the Assistant City Manager; or the City Manager.

(c) *Confidentiality.* A complaint may be made anonymously, and every reasonable effort will be made to protect the confidentiality of the complainant. The complainant's identity, however, may have to be disclosed if the investigation reveals the potential for formal disciplinary action or criminal prosecution.

- (d) *Notifications.* Anyone who receives a complaint should immediately notify the City Manager (or, the Assistant City Manager if the City Manager has allegedly committed or permitted the harassment or discrimination) and the City Attorney.
- (e) *Documentation.* Each person receiving or investigating a complaint shall document all reports and actions taken.
- (f) *Investigation.* Upon receipt of a complaint of harassment or discrimination, the Appropriate Department Director shall cause a formal or informal investigation to be made. Any investigation of a peace officer must comply with the requirements of the Public Safety Officers' Procedural Bill of Rights Act.
- (g) *Determination and Report.* Upon completion of an investigation, the Appropriate Department Director shall:
- (1) Make a determination whether the alleged conduct constitutes harassment, discrimination, or other misconduct, after giving consideration to all factual information, the totality of the circumstances, including the nature of the verbal, physical, visual or sexual conduct and the context in which the alleged incidents occurred; and
  - (2) Report the results of the investigation and the determination to the appropriate persons, including the complainant, the alleged harasser, the supervisor, the Department Director, the City Manager and the City Attorney.
- (h) *Disciplinary Action.* If harassment, discrimination, or other misconduct is found to have occurred, the Appropriate Department Director shall take or recommend to the City Manager to take prompt and effective remedial action against the harasser. The action will be commensurate with the severity of the offense.
- (i) *Protection.* The Appropriate Department Director shall take all reasonable steps to protect the victim from retaliation and from further harassment or discrimination, if sustained.
- (j) *DFEH Complaint.* Because it is the goal of the Town to identify and prevent harassing and/or discriminating behavior, if problems or concerns arise, the affected employee is urged to make use of the process set forth above. However, any employee has a right to go directly to the appropriate government agency, including the California Department of Fair Employment and Housing.

[Reference: GOV'T CODE §§ 53296; 53297; 53298; 53298.5]

### **Division 3: Grievances**

#### **3.04.070 Grievances, Scope**

- (a) Strict adherence to the procedures outlined below is mandatory. Time limits may only be extended by the City Manager upon a showing of good cause.
- (b) The grievance procedure is not intended to be used, and shall not be used to:

- (1) Resolve a complaint of misconduct;
- (2) Request a change in wages, hours or working conditions;
- (3) Challenge the content of employee evaluations or performance reviews;
- (4) Challenge a reclassification, layoff, transfer, denial of reinstatement or denial of a step or merit increase; or
- (5) Appeal a reduction in pay, demotion, suspension, termination, or other form of disciplinary action.

### **3.04.080 Representation in Grievance Matters**

(a) The grievant may be represented by an Employee's Representative. The grievant must inform the Department Director within a reasonable time prior to the grievance meeting of the name and contact information of the person, if any, who will represent the employee at the grievance meeting.

- (1) If the representative is a fellow employee and the meeting or hearing is expected to be completed in one hour or less, the Employee's Representative may take paid, on-duty time to attend the hearing, provided the grievant acknowledges and agrees that the on-duty Employee's Representative's primary obligations shall be calls for service and if the on-duty Employee's Representative is called away, the meeting or hearing may proceed without the presence of the Employee's Representative.
- (2) In all other cases, if the representative is a fellow employee, the Employee's Representative will receive unpaid time off from his or her work assignment for the time of the grievance meeting or hearing and reasonable travel time.

(b) Any employee may present a grievance without the involvement of a representative. However, the Town shall not consider a grievance of an alleged violation of a Memorandum of Understanding or a negotiated rule until the employee filing the grievance has given his or her bargaining unit a copy of the grievance, and the bargaining unit has been given the opportunity to respond.

### **3.04.090 Grievance Procedure**

(a) *Reporting.* A grievant shall first present the grievance to his or her immediate supervisor within seven calendar days after the grievant knew, or reasonably should have known, of the circumstances which form the basis for the grievance. Failure to do so will render the grievance null and void.

(b) *Informal Conference.* Within seven calendar days after the presentation of the grievance, the immediate supervisor shall investigate the grievance, document the investigation, and attempt to resolve the matter. At least one conference, either personal or by phone, shall be held between the grievant and the immediate supervisor. At the conclusion of

the informal conference, the supervisor shall advise the grievant of his or her right to present a formal grievance to the next supervisory level.

(c) *Formal Submittal of Grievance.* If the grievance is not resolved during the informal conference and the grievant wishes to pursue the matter, the grievant may present a formal grievance to the Appropriate Department Director within seven days after the decision by the immediate supervisor. A formal grievance must be in writing and must set forth the following information:

- (1) The specific written departmental or Town rule or regulation or specific provision of a Memorandum of Understanding allegedly violated, misinterpreted or misapplied;
- (2) The specific act or omission which gave rise to this alleged violation, misinterpretation or misapplication;
- (3) The date or dates on which the violation, misinterpretation or misapplication occurred; and
- (4) The identity of each document, witness or other evidence supporting the grievant's position.

(d) *Decision.* The Department Director shall communicate his or her decision to the grievant in writing within 14 days after receiving the grievance, unless an extension has been granted in writing by the City Manager. Prior to rendering a decision, the Department Director may, in his or her discretion, hold a conference with the employee.

(e) *Appeals.* If the Appropriate Department Director does not respond within the time limits or if the grievant is not satisfied with the decision of the immediate supervisor, the grievant may appeal to the City Manager. An appeal to the City Manager must be in writing, and must be delivered to the City Manager within seven calendar days after the decision of the Appropriate Department Director is due or rendered. Prior to rendering a decision, the City Manager may, in his or her discretion, may hold a conference with the employee. The decision of the City Manager shall be final.

## **Division 4: Disciplinary Procedures**

### **3.04.100 Disciplinary Action**

(a) Regular employees shall be subject to disciplinary action for cause in accordance with the procedures set forth in this Division.

(b) All other employees of the Town may be subject to disciplinary action, at the discretion of the Appropriate Department Director with concurrence from the City Manager. The remaining provisions of this Subchapter shall not be applicable to employees who are not regular employees of the Town. Nothing herein shall prevent the Appropriate Department Director, with concurrence of the City Manager, from terminating an at-will employee without cause and without progressive discipline.

(c) This Division shall not be applicable to an employee challenging a rescission of his or her promotion while the employee is on promotional probation, except where the rescission is accompanied by termination, demotion to below the classification held immediately prior to the promotion, or suspension for up to 60 days.

### **3.04.110 Types of Disciplinary Action**

The grounds for disciplinary action are set forth elsewhere in this Chapter and include unsatisfactory job performance and misconduct. The following types of disciplinary action may be imposed:

- (1) *Termination.* Involuntary discharge from Town employment.
- (2) *Demotion.* Reduction to a classification having lesser responsibilities and duties and a lower maximum salary.
- (3) *Reduction in pay (step within range).* Withdrawal of step advancements granted for merit, efficiency and length of service. Withdrawal of step advancements may be temporary or permanent.
- (4) *Suspension without pay.* Suspension from duty without pay for up to 60 days. An employee who is suspended shall forfeit all rights, privileges and salary, during the period of suspension, but shall not forfeit health and welfare benefits or retirement benefits.

### **3.04.120 Oral Reprimand**

(a) An oral reprimand may be used by a supervisor to warn or caution an employee. An oral reprimand may be considered as relevant evidence in any hearing resulting from subsequent disciplinary action.

(b) The oral reprimand may be recorded in writing and placed in the employee's personnel file provided that the provisions relating to written reprimands in section 3.04.130 are followed.

(c) The procedures set forth in this Division for imposing or appealing disciplinary actions shall not apply to oral reprimands.

### **3.04.130 Written Reprimand**

(a) A written reprimand is an official notification to the employee that there is cause for dissatisfaction with the employee's performance or conduct and that further disciplinary measures may be taken if that cause is not corrected.

(b) Written reprimands shall be made a part of the employee's personnel file and may be considered as relevant evidence in any hearing resulting from subsequent disciplinary action. However, an employee may attach a written rebuttal statement to the written reprimand within 30 calendar days of the issuance of the written reprimand. Three years after the date of a written reprimand, the employee may request that the reprimand be removed from his or her personnel file. The request shall be directed to the Department Director who shall have sole

and absolute discretion to grant or deny the request. In exercising his or her discretion, the Department Director may consider the presence or absence of any other disciplinary actions in the intervening three years as well the underlying conduct for which the reprimand was issued.

(c) The procedures set forth in this Division for imposing or appealing disciplinary actions shall not apply to written reprimands except that a public safety officer may, within 30 days after receiving a written reprimand, file a written response.

### **3.04.140 Right to Representation**

At any step in the disciplinary process, the employee shall have the right to represent himself or herself, or to designate an Employee's Representative.

### **3.04.150 Authority to Impose Disciplinary Action**

(a) With respect to public safety officers:

- (1) The Chief of Police shall have the authority to issue the Notice of Intent to Take Disciplinary Action described in this Subchapter or to delegate that authority to another employee;
- (2) The informal conference described this Subchapter shall be conducted by a neutral person and may not be conducted by the person who issued the Notice of Intent to Take Disciplinary Action; and
- (3) The final decision to impose disciplinary action shall be made by the City Manager or a person designated by the City Manager who may not be the person who issued the Notice of Intent to Take Disciplinary Action.

(b) With respect to unsworn employees under the supervision of the Chief of Police, the Chief of Police shall have the authority to issue the Notice of Intent to Take Disciplinary Action described in this Subchapter, to conduct the informal conference described in this Subchapter and to make the final decision to impose disciplinary action, or to delegate to another employee the authority to perform those functions.

(c) With respect to all other employees, the City Manager shall have the authority to issue the Notice of Intent to Take Disciplinary Action described in this Subchapter, to conduct the informal conference described this Subchapter and to make the final decision to impose disciplinary action, or to delegate to another employee the authority to perform those functions.

### **3.04.160 Notice of Intent to Take Disciplinary Action**

(a) Where the proposed discipline is termination, demotion, reduction in pay, or suspension without pay, the employee shall be provided written notice of the following prior to the imposition of discipline:

- (1) A statement of the proposed disciplinary action to be taken against the employee and the proposed effective date;
- (2) A statement of the facts upon which the disciplinary action is based;



- (3) A statement indicating the cause(s) for disciplinary action;
- (4) A statement advising the employee of the right to respond, either orally or in writing, to the authority initially proposing the disciplinary action at an informal conference; and
- (5) A copy of, or access to, the materials upon which the disciplinary action is based.

(b) The above written notice shall be served upon the employee either personally or by certified mail, return receipt requested, and addressed to the last known address of the employee.

(c) A notice of intent and the procedures set forth below do not apply if the disciplinary action taken is an oral or written reprimand.

### **3.04.170 Informal Conference on a Disciplinary Matter**

The employee shall be given at least seven calendar days to respond orally or in writing to the Notice of Intent to Take Disciplinary Action and to request an informal conference. If the employee requests an informal conference, the person designated in section 3.04.140 shall meet with the employee in an informal conference to provide the employee an opportunity to present his or her oral response. The informal conference shall be non-evidentiary. Because the conference is informal, witnesses are generally not permitted. However, the employee may convey all information supporting his or her case without regard for the rules of evidence.

### **3.04.180 Final Notice of Disciplinary Action**

(a) Within 15 calendar days after the informal conference, the person designated to take final action shall:

- (1) Dismiss the Notice of Intent and take no disciplinary action against the employee; or
- (2) Prepare and serve upon the employee a Final Notice of Disciplinary Action, which may uphold, modify or reduce the proposed discipline.

(b) The Final Notice of Disciplinary Action shall include the following:

- (1) Notice of the disciplinary action to be imposed upon the employee;
- (2) Notice of the effective date of the disciplinary action;
- (3) Notice of reasons for the disciplinary action, including the causes for the disciplinary action; and
- (4) Notice of the right and time limit, if any, to appeal the disciplinary action.

(c) The above written notice shall be served upon the employee either personally or by certified mail, return receipt requested, and addressed to the last known address of the employee.

## **Division 5: Appeals**

### **3.04.190 Appeal from Final Notice of Disciplinary Action**

- (a) Within 15 calendar days after a Final Notice of Disciplinary Action is personally served on the employee, or 20 calendar days after a Final Notice of Disciplinary Action is served by mail as provided above, an employee may appeal a termination, demotion, reduction in pay, or suspension without pay, by filing a Notice of Appeal with the City Manager. The Notice of Appeal must be in writing signed by the employee ("appellant") or the Employee's Representative and must state the grounds for the appeal.
- (b) The appeal will be dismissed if the Notice of Appeal is not filed on time. An appeal is considered filed when it is actually delivered to the City Manager.
- (c) The effective date of the disciplinary action shall be determined by the person imposing the discipline.
- (d) An appeal by the employee shall not stay imposition of the disciplinary action, except that the City Manager may, within his or her sole discretion, stay a suspension pending the appeal.
- (e) An appeal is an evidentiary hearing.

### **3.04.200 Selection of Alternative Dispute Resolution (ADR) Panel and Hearing Officer**

- (a) *Alternative Dispute Resolution (ADR) Panel.* Whenever these policies require the selection of an ADR Panel, the Panel shall be selected as follows. The City Manager shall give written notice to the appellant that an ADR Panel of five persons shall be selected. Within 15 days of such notice, the City Manager and the appellant may each select two members to the ADR Panel. If either side fails or refuses to select two members to the ADR Panel within 15 days after delivery of such notice, the other side may select four members to the ADR Panel. Upon selection of four members to the ADR Panel, three of those members shall select another member to complete the ADR Panel. Whenever an ADR Panel serves as a trier of fact, the rules in this Subchapter applicable to Hearing Officers shall be applicable to the ADR Panel.
- (b) *Hearing Officer.* Whenever these policies require the selection of a Hearing Officer, the Officer shall be selected as follows. The City Manager shall give written notice to the appellant that a Hearing Officer shall be selected, and the parties will meet and confer to select one person mutually agreeable to both sides. If the Town and the appellant cannot agree upon a Hearing Officer within 15 days of such notice, then the City Manager may request the State Office of Administrative Hearings to select an administrative law judge to hear the appeal.

### **3.04.210 Appeals by Public Safety Officers**

- (a) *Appeals from Major Forms of Discipline*
  - (1) Upon receipt of a timely Notice of Appeal from a public safety officer who was terminated, suspended for more than 14 days, or demoted, the City Manager

shall give the appellant written notice that an ADR Panel and a Hearing Officer shall be selected in accordance with section 3.04.200.

- (2) Upon selection of the ADR Panel, the parties must engage in non-binding mediation before the ADR Panel before commencement of the hearing described in the next paragraph. Alternatively, the parties may, prior to the non-binding mediation, waive a hearing before a Hearing Officer, stipulate that there shall be no mediation and stipulate that the ADR Panel shall hear the appeal, determine all questions of fact and render a decision that shall be final and binding.
- (3) If the appeal has not been resolved by non-binding mediation and if the appellant has not waived his or her right to have the appeal heard by a Hearing Officer, the appeal shall be referred to a Hearing Officer appointed in accordance with this Subchapter, who shall conduct the appeal in the matter set forth herein. The Hearing Officer shall determine all questions of fact, and the decision of the Hearing Officer shall be final and binding.

(b) *Appeals from Other Forms of Discipline.* Upon receipt of a timely Notice of Appeal from a public safety officer who has received a Final Notice of Disciplinary Action that does not include punishment consisting of termination, suspension for more than 14 days, or demotion, the City Manager shall give the appellant written notice that an ADR Panel shall be selected in accordance with section 3.04.200. The ADR Panel shall determine all questions of fact, and the decision of the ADR Panel shall be final and binding.

### **3.04.220 Appeals by Miscellaneous Employees**

Upon receipt of a timely Notice of Appeal from a miscellaneous employee who has received a Notice of Final Discipline that includes punishment consisting of termination, demotion, reduction in pay or suspension, the City Manager shall give the appellant written notice that an ADR Panel shall be selected in accordance with section 3.04.200. The ADR Panel shall determine all questions of fact, and the decision of the ADR Panel shall be final and binding.

### **3.04.230 Notice of Hearing**

The City Manager shall promptly notify the appellant in writing of the date, time, and place of the hearing. The notice shall be served on the appellant by personal delivery or by first class mail, postage prepaid, to the last known address of the appellant, not less than 15 days before the commencement of the hearing.

### **3.04.240 Subpoenas**

(a) The Mayor, under the authority of the City Council, and at his/her sole discretion, shall issue subpoenas at the request of either party made at least ten calendar days prior to the commencement of the hearing. The request shall be in writing and shall include the identity of the witness or documents to be subpoenaed and shall briefly indicate the nature and relevancy of the testimony or contents.

(b) The party requesting the subpoena shall be responsible for its service and shall serve it a reasonable time before the hearing.

### **3.04.250 Pre-Hearing Disclosures**

Seven calendar days prior to the date set for the hearing, each party shall serve upon the other party a list of all witnesses and a copy of all exhibits. The Town's exhibits shall be designated by number. The appellant's or association's exhibits shall be designated by alphabetical letter.

### **3.04.260 Impartiality**

- (a) The Hearing Officer may not be demonstrably biased for or against the appellant or the Town, or have a material personal or financial interest in the matter.
- (b) In order to preserve impartiality, the Hearing Officer may not communicate with a party on the merits of a contested matter without giving notice to the other party and affording the other party an opportunity to participate.

### **3.04.270 Conduct of Hearing**

- (a) All hearings shall be closed unless the appellant makes a request for a public hearing before the commencement of the hearing.
- (b) The hearing shall proceed in the following order unless the Hearing Officer directs otherwise:
  - (1) Opening statement by the Town;
  - (2) Opening statement by the appellant;
  - (3) Evidence by the Town;
  - (4) Evidence by the appellant;
  - (5) Rebuttal evidence by the Town;
  - (6) Oral argument by the Town;
  - (7) Oral argument by the appellant; and
  - (8) Rebuttal argument by the Town.
- (c) Oral evidence shall be taken only on oath or affirmation.
- (d) Each party shall have the right to be represented by an attorney; to call and examine witnesses; to introduce exhibits; to cross-examine the other party's witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If the appellant does not testify in his or her own behalf, he or she may be called and examined as if under cross-examination.
- (e) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted, if it is the sort of evidence on which

responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection on civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded. Evidence of prior misconduct of the appellant is relevant and admissible. All objections to the admission of evidence must be made at the time said evidence is presented or such objection shall be deemed waived.

(f) A record must be made, at the Town's expense, to preserve the matter for judicial review. The City Clerk shall determine whether the record shall be made by stenographer or audio tape. A written copy of the record shall be provided to the appellant without charge provided that, if the record was an audiotape, the appellant shall bear the cost of transcribing the tape recording into a printed record and shall provide the Town with a printed copy of the transcribed record. The record shall include each and every piece of documentary or real evidence admitted.

(g) During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon motion of either party.

(h) No still photographs, moving pictures, or television pictures shall be taken in the hearing chamber during a hearing.

(i) The Hearing Officer may grant a continuance for any reason he or she believes to be important to reaching a fair and proper decision.

[Reference: GOV'T CODE § 54957]

### **3.04.280 Decision on Appeal**

After hearing all evidence and argument, the Hearing Officer shall render a written Statement of Decision which shall include a finding as to each charge (sustained, not sustained, or exonerated); a statement of the nature of the discipline approved, if any; and a general explanation of the factual basis for the decision. All findings and conclusions that sustain the charges made shall be proved by a preponderance of the evidence. The Hearing Officer shall render his or her Statement of Decision as soon after the conclusion of the hearing as possible, but no later than 30 calendar days after conducting the hearing, unless otherwise stipulated by the parties.

## **Division 6: POBR**

### **3.04.290 Public Safety Officers' Procedural Bill of Rights**

Nothing in this Subchapter shall be construed to deprive a public safety officer of any right guaranteed by the Public Safety Officers' Procedural Bill of Rights Act (California Government Code sections 3300 et seq.).

